

ROUTING AND RECORD SHEET

SUBJECT: (Optional)

Foreign Manufacture of ADP Equipment

25X1

FROM:

C/ADP&EB/PD/OL

EXTENSION

NO.

OL 1-2844

25X1

DATE

25X1

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TO: (Officer designation, room number, and building)

DATE

OFFICER'S INITIALS

COMMENTS (Number each comment to show from whom to whom. Draw a line across column after each comment.)

1. C/L&PLD/OGC

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SECRET

MEMORANDUM FOR: Chief, Logistics and Procurement Law Division,
Office of General Counsel

FROM:


Chief, ADP & Engineering Branch,
Procurement Division, Office of Logistics

STAT

SUBJECT: Foreign Manufacture of ADP Equipment

REFERENCE:

A. 

STAT

B. Memo dtd 4 May 81 fm C/ADP&EB/PD/OL
to C/PD/OL

C. Memo dtd 9 June 81 fm C/ISSG/OS to
DD/PTAS/OS

1. As you can see from the attached correspondence, this office has taken several preliminary steps to address the foreign manufacture issue and its impact on Agency mission and the procurement process. Insofar as these issues relate to procurement of ADP equipment, this office is concerned about the implications of a foreign manufacture policy which restricts/limits competition.

2. In addition to the action taken above, we have made initial contact with the General Counsel's Office of the U.S. Trade Representative (USTR) for purposes of obtaining information regarding policies established by USTR exempting "...purchases indispensable for national security or national defense." (41 CFR Chapter 1, FPR Temp. Reg. 57, Purchases Under The Trade Agreements Act of 1979; Temporary Regulations; Vol. 46, No. 10 dtd 15 January 1981; Section 1-6, 1603(e)(2) "Applicability," attached.) Per telecon with Ms. Amy Porges, General Counsel, USTR, to date a formal exemption policy as to national security, has not been established. However, USTR and DOD are working in concert to do so.

3. This office solicits your comments and assessment of the issues presented in the attachments as well as any additional relevant issues you may foresee as requiring discussions. We look forward to your attendance at the previously discussed meeting to be held on 13 July 1981, at 10:00 am, in Room 2D03 Headquarters. We believe this to be a significant issue and, therefore, request your earliest attention to this matter.


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OL 1-2844

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1 June 1981

TO: (Name, office symbol, room number, building, Agency/Post)		Initials	Date
1.	C/SS/OL		6/2/81
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Action	File	Note and Return	
Approval	For Clearance	Per Conversation	
As Requested	For Correction	Prepare Reply	
Circulate	For Your Information	See Me	
Comment	Investigate	Signature	
Coordination	Justify		

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REMARKS

I would appreciate receiving your comments
by 9 June 1981.

DO NOT use this form as a RECORD of approvals, concurrences, disposals,
clearances, and similar actions

FROM: (Name, org. symbol, Agency/Post)	
C/ADP/PD/OL	

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OPTIONAL FORM 41 (Rev. 7-76)
Prescribed by GSA
FPMR (41 CFR) 101-11.206

☆ U. S. GPO: 1978-0-261-647/3354

4 MAY 1981

MEMORANDUM FOR: Chief, Procurement Division, OL

FROM:


Chief, ADP&EB/PD/OL

STAT

SUBJECT: Proposed ODP Policy Excluding ADPE
of Foreign Manufacture

REFERENCE:

STAT

1. The above reference contains ODP's proposed policy "that automatic data processing equipment which is substantially of foreign manufacture will not be procured for use in Office Data Processing computer networks."

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3. In response to ODP's request for reasons to strengthen the policy, we suggest that these are questions which should first be addressed, including those in Attachment 1.

4. Upon adequate response to these questions and further identification of the specific security considerations which necessitate the proposed policy, we are prepared to further assist in development of approaches to meet actual needs in this area.

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Attachment 1

1. What are the parameters of "Substantially of Foreign Manufacturer?" The entire system, individual components - subcomponents?
2. How are these determinations (Foreign Manufacture) to be made? On a case by case basis? For each procurement? By who? Any exceptions?
3. Will vendors have an opportunity to rebut this policy and its presumptions?
4. What are the established security safeguards presently imposed upon ADPE systems to prevent these occurrences?
5. Shouldn't this type of policy apply to the Agency vice ODP?
6. What is the policy of other intelligence organizations, i.e., NSA, DIA, ARMY, AIR FORCE, FBI?
7. Have there been prior documented instances of tampering, foreign national consultations, etc.?
8. What source would be available to the Agency, given the fact that most ADPE vendors utilize transnational corporations for parts, mainframe assembly, etc.?
9. How would domestically manufactured, not foreign designed equipment, be treated under the policy?

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GENERAL SERVICES ADMINISTRATION

41 CFR Chapter 1

[FPR Temp. Reg. 57]

Purchases Under the Trade Agreements Act of 1979; Temporary Regulations

AGENCY: General Services
Administration.

ACTION: Temporary regulation.

SUMMARY: This temporary regulation prescribes policies and procedures applicable to the procurement of supplies and services which involve offers from foreign business concerns. The regulation is based on the Trade Agreements Act of 1979 and the related Agreement on Government Procurement. The intended effect is to eliminate the discriminations practiced by the United States and foreign Governments in the procurement of products and supplies.

DATE: Effective date: This regulation is effective for all solicitations issued on and after January 1, 1981, as follows:

a. When solicitations involve negotiated procurements, do not reflect the provisions of this regulation, and have not resulted in awards prior to January 21, 1981, the solicitation shall be amended to include the requirements in § 1-6.1611.

b. When solicitations involve formal advertising, do not reflect the provisions of this regulation, and the closing date for the submission of offers is prior to January 21, 1981, awards may be made without regard to this regulation.

c. When solicitations involve formal advertising, do not reflect the provisions of this regulation, and the closing date for the submission of offers is after January 21, 1981, but the solicitation was issued before that date, the solicitation shall be amended to include the requirements in § 1-6.1611.

d. All solicitations issued after January 21, 1981, shall comply fully with the provisions of this regulation.

Expiration date: This regulation will continue in effect until January 1, 1983.

Comment date: Comments due by March 23, 1981. Time did not permit the solicitation of comments prior to the issuance of this regulation. However, comments from interested parties would be welcomed.

ADDRESS: General Services
Administration (VR), Washington, DC
20406.

FOR FURTHER INFORMATION CONTACT:
Philip G. Read, Director, Federal
Procurement Regulations Directorate,

Office of Acquisition Policy (703-557-8947).

SUPPLEMENTARY INFORMATION: The Buy American Act, subject to certain exclusions, has been waived by the President for eligible products originating in designated countries meeting the requirements under section 301(b) of the Trade Agreements Act of 1979. The waiver is effective when the total price paid for a product is equal to or more than the dollar threshold specified by the U.S. Trade Representative (now \$196,000). The Buy American Act continues to apply to procurements which are less than the dollar limitation and to countries that are not parties to the Agreement. (Sec. 205(c), 63 Stat. 390; (40 U.S.C. 486(c)))

In 41 CFR Chapter 1, the following temporary regulation is listed in the Appendix at the end of the chapter.

[Federal Procurement Regs.; Temporary Reg. 57]

Purchases Under the Trade Agreements Act of 1979

January 12, 1981.

1. *Purpose.* This FPR temporary regulation implements the provisions of the Trade Agreements Act of 1979 and Executive Order 12260, December 31, 1980.

2. *Effective date.* This regulation is effective for all solicitations issued on and after January 1, 1981, as follows: a. When solicitations involve negotiated procurements, do not reflect the provisions of this regulation, and have not resulted in awards prior to January 21, 1981, the solicitation shall be amended to include the requirements in § 1-6.1611.

b. When solicitations involve formal advertising, do not reflect the provisions of this regulation, and the closing date for the submission of offers is prior to January 21, 1981, awards may be made without regard to this regulation.

c. When solicitations involve formal advertising, do not reflect the provisions of this regulation, and the closing date for the submission of offers is after January 21, 1981, but the solicitation was issued before that date, the solicitation shall be amended to include the requirements in § 1-6.1611.

d. All solicitations issued after January 21, 1981, shall comply fully with the provisions of this regulation.

3. *Expiration date.* This regulation will continue in effect until January 1, 1983.

4. *Background.* a. New Subpart 1-6.16 implements the Agreement on Government Procurement, which is a part of the trade agreements negotiated in the Tokyo Round of the Multilateral

Trade Negotiations. The agreements were entered into in Geneva on April 12, 1979, pursuant to section 102 of the Trade Act of 1974. The authority to implement the Agreement is provided by the Trade Agreements Act of 1979 (Pub. L. 96-39, 19 U.S.C. 2511-2518), Executive Order 12260, December 31, 1980 (46 FR 1653, January 6, 1981), and Determinations by the U.S. Trade Representative, December 31, 1980 (46 FR 1657, January 6, 1981).

b. The Agreement requires the administration of certain procurement programs so that eligible products and suppliers of eligible products from designated countries are treated no less favorably than domestic products and suppliers. It also requires that there be no discrimination with respect to eligible products or suppliers from designated countries.

c. The Buy American Act, subject to certain exclusions, has been waived by the President for eligible products originating in designated countries meeting the requirements under section 301(b) of the Act. The waiver is effective when the total price paid for a product is equal to or more than the dollar threshold specified by the U.S. Trade Representative (now \$196,000). The dollar limitation may be modified from time to time. The Buy American Act continues to apply to procurements which are less than the dollar limitation and to countries that are not parties to the Agreement.

5. *Explanation of changes.*

a. Section 1-1.1003-7 is amended to add new paragraph (b)(10) as follows:

§ 1-1.1003-7 *Preparation and transmittal.*

(b) * * *

(10) *Trade Agreements Act of 1979—eligible products.* For the procurement of an eligible product from a designated country when the total estimated price of the product is equal to or more than the specified dollar threshold (see § 1-6.1601(e)), each synopsis sent to the Commerce Business Daily, in addition to other requirements of this § 1-1.1003-7(b), shall indicate: (i) The nature and quantity of the products to be supplied, or envisaged to be purchased in the case of contracts of a recurring nature;

(ii) Whether the purchase is open (competitive) or sole source;

(iii) Any delivery date requirements;

(iv) The address and final date for submitting an application to be invited to offer or for receiving offers;

(v) That offers must be submitted in the English language and in U.S. dollars;

(vi) The address of the activity that will award the contract and any

information necessary for obtaining specifications and other documents;

(vii) Any economic and technical requirements, financial guarantees, and information required from suppliers that is stated in the solicitation; and

(viii) The amount and terms of payment of any sum required in order to obtain the solicitation documentation, if any.

b. Section 1-2.202 is amended to add new paragraph (d) to § 1-2.202-1 and to add a new § 1-2.202-7, as follows:

§ 1-2.202 Miscellaneous rules for solicitation of bids.

§ 1-2.202-1 Bidding time.

(d) *Trade Agreements Act of 1979—eligible products.* When a solicitation involves eligible products under the Trade Agreements Act of 1979, and the total estimated price of a product is equal to or more than the specified dollar threshold (see § 1-6.1601(e)), the solicitation shall specify at least a 30-day bidding time from the date of issuance of the solicitation (see § 1-6.1605-1(b)(4)).

§ 1-2.202-7 Trade Agreements Act of 1979—eligible products.

When a solicitation involves eligible products and the total estimated price of a product is equal to or more than the specified dollar threshold (see § 1-6.1601(e)), the solicitation shall require that offers be submitted in the English language and in U.S. dollars (see § 1-6.1605-1(b)(6)).

c. Section 1-2.203-4 is amended to designate the existing paragraph as (a) and to add a new paragraph (b) as follows:

§ 1-2.203-4 Synopses of invitations for bids.

(a) * * *

(b) The synopsis of a proposed procurement of an eligible product from designated countries, when the total estimated price of the product is equal to or more than the specified dollar threshold (see § 1-6.1601(e)), shall state that offers must be in the English language and in U.S. dollars (see § 1-6.1605-1(b)(6)).

d. Section 1-2.402 is amended to add paragraph (d) as follows:

§ 1-2.402 Opening of bids.

(d)(1) When offers involving eligible products from a designated country are opened, offerors or their representatives or an appropriate and impartial witness not connected with the acquisition shall be present.

(2) The name of the impartial witness, if any, shall appear on the abstract of offers.

e. Section 1-2.408 is amended to redesignate the present text as § 1-2.408-1 and to add a new § 1-2.408-2 as follows:

§ 1-2.408 Information to bidders.

§ 1-2.408-1 Rejection of offers (general).

* * *

§ 1-2.408-2 Rejection of offers under the Trade Agreements Act of 1979.

(a) Contracting officers shall notify unsuccessful offerors in writing within seven working days after the award of a contract (or contracts) that their offers were not accepted when an offer involves an eligible product from a designated country, and the total price paid (sum of all contracts for a product under a solicitation) for the product is equal to or more than the specified dollar threshold (see §§ 1-6.1601(e) and 1-6.1608).

(b) Additional information requested by an unsuccessful offeror of an eligible product from a designated country shall be provided by an official above the level of the contracting officer (see § 1-6.1608(b)).

f. Section 1-3.105 is added as follows:

§ 1-3.105 Trade Agreements Act of 1979—eligible products.

§ 1-3.105-1 Time for the submission of offers.

When solicitations involve eligible products under the Trade Agreements Act of 1979 and the total estimated price of a product is equal to or more than the specified dollar threshold (see § 1-6.1601(e)), the solicitation shall specify at least 30 days for the submission of offers (see § 1-6.1605-1(b)(4)).

§ 1-3.105-2 English language and U.S. dollars.

When a solicitation involves eligible products and the total estimated price of a product is equal to or more than the specified dollar threshold (see § 1-6.1601(e)), the solicitation shall require that offers are to be submitted in the English language and in U.S. dollars (see § 1-6.105-1(b)(6)).

§ 1-3.105-3 Opening offers.

(a) When offers involving eligible products from designated countries are opened, offerors or their representatives or an appropriate and impartial witness not connected with the acquisition shall be present. However, there shall be no disclosure of the offers.

(b) The name of the impartial witness, if any, shall appear on the abstract of offers (see §§ 1-2.402 and 1-3.811).

§ 1-3.105-4 Notification of nonacceptance of offer.

(a) Contracting officers shall notify unsuccessful offerors in writing within seven working days after the award of a contract (or contracts) that their offers were not accepted when an offer involves an eligible product from a designated country and the total price paid (sum of all contracts for a product under a solicitation) for the product is equal to or more than the specified dollar threshold (see § 1-6.1601(e)).

(b) Additional information requested by an unsuccessful offeror of an eligible product from a designated country shall be provided by an official above the level of the contracting officer (see § 1-6.1608(b)).

g. Subpart 1-6.16 is added as follows:

Subparts 1-6.11—1-6.15 [Reserved]

Subpart 1-6.16 Purchases under the Trade Agreements Act of 1979.

§ 1-6.1600 Scope.

This subpart implements the Agreement on Government Procurement (hereafter referred to as the Agreement) which is a part of the trade agreements negotiated in the Tokyo Round of the Multilateral Trade Negotiations. The Agreements were entered into in Geneva on April 12, 1979, pursuant to section 102 of the Trade Act of 1974. The authority to implement the Agreement is provided by the Trade Agreements Act of 1979 (Public Law 96-39, 19 U.S.C. 2511-2518) and Executive Order 12260, December 31, 1980, (46 FR 1653, January 6, 1981) and Determinations by the U.S. Trade Representative, December 31, 1980, (46 FR 1657, January 6, 1981).

§ 1-6.1601 Definitions.

The terms used in this subpart have meanings as follows: (a) "Designated country" means a country or instrumentality designated by the President or the U.S. Trade Representative under section 301 of the Trade Agreements Act of 1979 (19 U.S.C. 2511). Designated countries are listed at § 1-6.1612. Additions will be announced in later FPR changes.

(b) "Eligible product" means, with respect to any designated country, a product of that country which is covered by the Agreement for purposes of acquisition. This includes services (other than transportation) incidental to the supply of products if the value of those incidental services does not exceed the value of the products themselves. It does not include service contracts. For the

United States, all products are eligible, except to the extent that they are excluded by reason of the absence of an agency from the list of agencies in § 1-6.1613.

(c) "Product" means a line item in a solicitation. However, if two or more line items carry identical stock numbers or other identification, this situation shall be deemed to constitute a single line item.

(d) "Rule of Origin" means that an article is a product of a designated country if (1) it is wholly the growth, product, or manufacture of that country, or (2) in the case of an article which consists in whole or in part of materials from another country, it has been substantially transformed into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was so transformed (see § 1-6.1609).

(e) "Dollar threshold" means \$196,000 or such other dollar amount as may be specified by the U.S. Trade Representative, from time to time.

§ 1-6.1602 Policy.

(a) ~~Offers of eligible products from designated countries shall be solicited and evaluated in the same manner as offers of products from the United States.~~ Designated countries are listed in § 1-6.1612.

(b) When the country of origin is not listed in § 1-6.1612, the Buy American Act (see Subpart 1-6.1) and the Balance of Payments Program (see Subpart 1-6.8) are applicable. In addition, those subparts apply if the total price paid for an eligible product is less than the specified dollar threshold (see § 1-6.1601(e)).

(c) The Buy American Act, i.e., the preference for U.S. products in the award of contracts, is, or may be, waived (subject to a number of exclusions; see § 1-6.1603) for purchases specifically covered by the Agreement.

(d) Countries that benefit from open competition for contracts awarded by the Government are required to offer reciprocal competitive opportunities to U.S. products and suppliers. The Agreement prohibits discrimination against U.S. suppliers in procurements by foreign governments. It also requires nondiscrimination and open and transparent application of required procurement procedures.

§ 1-6.1603 Applicability.

~~(a) The policies in this subpart apply only:~~ (1) if the total price paid for an eligible product (not two or more different eligible products) from a designated country is equal to or more

than the specified dollar threshold, and ~~(2) to the agencies listed in § 1-6.1613.~~

(b) If a contracting officer determines that an individual requirement for the acquisition of a product or products of the same type; e.g., an indefinite quantity type contract, may result in payments during the fiscal year which are equal to or more than the specified dollar threshold, the policies in this subpart shall apply.

(c) No acquisition of an eligible product shall be subject of more than one solicitation for the purpose of reducing the value of the resulting offers to amounts less than the specified dollar threshold.

(d) When a solicitation for an eligible product results in two or more contract awards for the product, the provisions of this Subpart 1-6.16 apply if the total amount of the contracts is equal to or more than the specified dollar threshold.

~~(e) The policies in this subpart do not apply to:~~ (1) Purchases under small business set-aside programs or minority business programs (see § 1-6.1604);

~~(2) Purchases of arms, ammunition, or war materials, or purchases indispensable for national security or national defense purposes; subject to policies established by the U.S. Trade Representative;~~

(3) Construction contracts;

(4) Service contracts (but services other than transportation incidental to the purchase of eligible products are covered by the Agreement, provided that the value of the service is not greater than the value of the product);

(5) Research and development contracts;

(6) Purchases for resale purposes;

(7) Purchases relating to the products of handicapped persons, of philanthropic institutions, or of prison labor;

~~(8) Leases or rentals of any item;~~

(9) Purchases for agencies not subject to the Agreement;

(10) Tied-aid procurements under AID foreign assistance programs; or

(11) Purchases by State and local governments, including purchases by State and local authorities with Federal funds.

§ 1-6.1604 Labor surplus area set-asides.

(a) Total labor surplus area set-asides which are not limited to small business shall not be made for procurements covered by this Subpart 1-6.16.

(b) Total or partial set-asides for small and minority businesses, whether or not combined with a labor surplus area set-aside (see section 117(e) of Pub. L. 96-302), are not covered by the Agreement (see § 1-6.1603).

§ 1-6.1605 Procedures for the purchase of eligible products from designated countries.

§ 1-6.1605-1 Solicitation procedures under this subpart.

When the estimated price of an eligible product included in a solicitation is equal to or more than the specified dollar threshold (see § 1-6.1601(e)), the following solicitation procedures are applicable. However, if the offer received for an eligible product which is the basis for the award is less than the dollar threshold, this subpart does not apply (see § 1-6.1603).

(a) *Publicizing proposed purchases.* When the estimated price of an eligible product is equal to or more than the specified dollar threshold (see § 1-6.1601(e)), a notice of proposed purchase shall be published in the Commerce Business Daily, in accordance with the requirements in § 1-1.1003-7(b)(10).

(b) *Solicitation of eligible products from designated countries.* (1) Sources offering eligible products from designated countries shall be included, upon request by these sources, on bidders mailing lists and comparable source lists, in accordance with the procedures in § 1-2.205.

(2) Solicitations for eligible products shall be sent directly to the sources for the products which appear on appropriate bidders mailing lists. When solicitations will be sent outside the United States, international airmail shall be employed (see §§ 1-2.202-1 and 1-2.203-1).

(3) Solicitations involving eligible products shall be made available, on request, to the embassy or other designated place or representative of a designated country.

(4) At least 30 days from the date of a solicitation shall be provided, consistent with the nature of and requirements for supplies or services, for the submission of offers involving eligible products from designated countries (see §§ 1-2.202-1 and 1-3.105-1).

(5) No technical requirements may be imposed solely for the purpose of precluding the acquisition of eligible products from designated countries.

(6) Solicitations shall require that offers involving eligible products from designated countries be submitted in the English language and in U.S. dollars (see §§ 1-2.201(a)(33), 1-2.202-7, and 1-3.105-2).

§ 1-6.1606 Opening of offers.

(a) When offers involving eligible products are opened, offerors or their representatives or an appropriate and impartial witness not connected with

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the acquisition shall be present (see §§ 1-2.402 and 1-3.105-3).

(b) The name of the impartial witness, if any, shall appear on the abstract of offers (see §§ 1-2.403 and 1-3.811).

§ 1-6.1607 Evaluation of offers.

Offers of eligible products from designated countries which are equal to or more than the specified dollar threshold (see § 1-6.1601(e)), shall be evaluated without regard to the Buy American Act or Balance of Payments Program, except as provided in § 1-6.1603.

§ 1-6.1608 Information to unsuccessful offerors.

(a) Contracting officers shall notify unsuccessful offerors in writing within seven working days after the award of a contract (or contracts) that their offers were not accepted (see §§ 1-2.408-2(a) and 1-3.105-4(a)) when an offer involves an eligible product from a designated country and the total price paid (sum of all contracts for a product under a solicitation) for the product is equal to or more than the specified dollar threshold (see § 1-6.1601(e)).

(b) Subsequent to the notice, if additional information is requested by an unsuccessful offeror, it shall be provided by an official above the level of the contracting officer (see §§ 1-2.408-2(b) and 1-3.105-4(b)).

§ 1-6.1609 Certificate of eligible product.

(a) Contracting officers shall rely on certificates by the offeror for purposes of satisfying the Rule of Origin. The following certificate shall be inserted in all solicitations for eligible products when the estimated price is equal to or more than the specified dollar threshold (see § 1-6.1603).

Certificate of Eligible Product

(a) The offeror hereby certifies that each eligible product, as provided in 41 CFR 1-6.1601, which is delivered in accordance with any contract resulting from this solicitation is from a country designated by the President or the U.S. Trade Representative pursuant to section 301 of the Trade Agreements Act of 1979.

(b) Offerors are encouraged to obtain advance decisions from the Commissioner of Customs regarding the origin of eligible products as provided in 19 CFR Part 177. Decisions rendered by the Commissioner should accompany the offer.

(b) The reliance of the contracting officer on the certification for award purposes shall not be affected by a failure of an offeror to obtain an advance decision and to furnish a copy of the decision with its offer.

(c) Any question regarding the validity of a certification which the Contracting Officer receives from another offeror shall be referred to the Commissioner of Customs for consideration by the offeror whose certification is challenged. It shall not be treated as a basis for holding up an award. However, failure of a challenged offeror to refer the matter to the Commissioner of Customs, upon the request of the Contracting Officer, will result in rejection of the offer.

(d) If a certification subsequently is determined by the Commissioner of Customs to be invalid, the imposition of penalties as authorized by law shall be considered, e.g., criminal penalty for false representation under 18 U.S.C. 1001.

§ 1-6.1610 Reporting requirements.

The reporting requirements of the Trade Agreements Act of 1979 will be satisfied by Individual Agency Procurement Action Reports.

§ 1-6.1611 Buy American Act clause.

When an eligible product is involved, the clause prescribed by § 1-6.104-5 and by Standard Forms 32 and 147 shall be amended by adding an addendum to the solicitation which provides for the incorporation of a parenthetical phrase following the title of the clause as follows:

(This Buy American Act clause is not applicable to contracts involving eligible products from designated countries when the award price for the product is \$(insert prescribed amount) or more)

§ 1-6.1612 Designated countries.

Austria; Bangladesh; Belgium; Benin; Bhutan; Botswana; Burundi; Canada; Cape Verde; Central African Republic; Chad; Comoros; Denmark; Federal Republic of Germany; Finland; France; Gambia; Guinea; Haiti; Hong Kong; Ireland; Italy; Japan; Lesotho; Luxembourg; Malawi; Maldives; Mali; Nepal; Netherlands; Niger; Norway; Rwanda; Singapore; Somalia; Sweden; Switzerland; Western Samoa; Sudan; Tanzania U.R.; Uganda; United Kingdom; Upper Volta; Yemen AR.

§ 1-6.1613 Agencies covered by the Agreement.

ACTION

Administrative Conference of the United States

American Battle Monuments Commission
Board for International Broadcasting
Civil Aeronautics Board
Commission on Civil Rights
Commodity Futures Trading Commission
Community Services Administration
Consumer Product Safety Commission

Departments of—Agriculture;¹ Commerce; Defense;² Education; Health and Human Services; Housing and Urban Development; Interior;³ Justice; Labor; State; Treasury.
Environmental Protection Agency
Equal Employment Opportunity Commission
Executive Office of the President
Export-Import Bank of the United States
Farm Credit Administration
Federal Communications Commission
Federal Deposit Insurance Corporation
Federal Home Loan Bank Board
Federal Maritime Commission
Federal Mediation and Conciliation Service
Federal Trade Commission
General Services Administration⁴
Inter-State Commerce Commission
Merit Systems Protection Board
National Aeronautics and Space Administration
National Credit Union Administration
National Labor Relations Board
National Mediation Board
National Science Foundation
National Transportation Safety Board
Nuclear Regulatory Commission
Office of Personnel Management
Overseas Private Investment Corporation
Panama Canal Commission
Railroad Retirement Board
Securities and Exchange Commission
Selective Service System
Smithsonian Institution
United States Arms Control and Disarmament Agency
United States International Communication Agency
United States International Development Cooperation Agency
United States International Trade Commission
Veterans Administration

§ 1-6.1614 Ineligibility to participate in U.S. procurement.

No purchase which is equal to or more than the specified dollar threshold may be made by an agency listed in § 1-6.1613 of an eligible product subject to the Agreement from countries listed in this § 1-6.1614. However, this limitation may be waived in the national interest in accordance with policies established by the U.S. Trade Representative.
Greece

6. *Agency action.* Pending the issuance of a permanent amendment to the Federal Procurement Regulations, agencies shall follow the policies and procedures in this temporary regulation.

7. *Submission of comments.* Time did not permit the solicitation of comments prior to the issuance of this regulation. However, comments from interested

¹ The Agreement on Government Procurement does not apply to the procurement of agricultural products made in furtherance of agricultural support programs or human feeding programs.

² Excludes Corps of Engineers.

³ Excludes the Bureau of Reclamation.

⁴ Excludes purchases by the National Tool Center, and the Region 9 Office (San Francisco, California).

parties would be welcomed. ADDRESS:
General Services Administration (VR),
Washington, DC 20406.

Ray Kline,

Acting Administrator of General Services.

[FR Doc. 81-1547 Filed 1-14-81; 8:45 am]

BILLING CODE 6820-61-M

Public Buildings Service

41 CFR Part 101-20

[FPMR Amdt. D-77]

Rules and Regulations Governing Public Buildings and Grounds

AGENCY: Public Buildings Service,
General Services Administration.

ACTION: Final rule.

SUMMARY: This regulation revises the GSA rules and regulations governing public buildings and grounds. It encourages the public to exercise its right to use these buildings and grounds but ensures GSA of its responsibility to safely and efficiently operate and maintain the public buildings and grounds under its charge and control.

EFFECTIVE DATE: January 15, 1981.

FOR FURTHER INFORMATION CONTACT:
Mr. Vincent L. Crivella, Legal Counsel,
Public Buildings Division, Office of
General Counsel (202 566-0495).

SUPPLEMENTARY INFORMATION:

(a) Background

The Public Buildings Cooperative Use Act of 1976 (Pub. L. 94-541), among other things, encourages the use of auditoriums, meeting rooms, courtyards, rooftops, and lobbies of public buildings by persons, firms, or organizations engaged in cultural, educational, or recreational activities that will not disrupt the operation of the buildings. GSA recognizes that once these areas had been designated by the Congress as public fora, consideration must be given to the constitutional guarantees of freedom of speech, free exercise of religion, and the right to peaceable assembly. GSA may not prohibit persons, firms, or organizations from occasionally using these areas of public buildings solely on the basis of the content of the activity.

These regulations have been established to promote the occasional use of public buildings under the charge and control of GSA for cultural, educational, and recreational activities, as well as activities protected by the First Amendment. GSA has determined that this regulation will not impose unnecessary burdens on the economy or on individuals, and therefore, is not

significant for the purposes of Executive Order 12044.

(b) Comments Received

On February 15, 1980, a notice of proposed rulemaking was published in the Federal Register (45 FR 10379) concerning the procedures to be followed in permitting the occasional use of public buildings and grounds under the charge and control of GSA. Interested parties were given an opportunity to submit comments on or before April 15, 1980. All comments were considered. GSA received eight comments on the proposed rule. Comments were received from Government agencies who occupy GSA-controlled buildings, religious organizations, and organizations concerned about the preservation of civil liberties. Organizations representing artists who desire to display art in public buildings also submitted comments. Many of these comments focused on significant constitutional issues relevant to the GSA proposal. The comments received have been helpful and the legal issues raised by the comments have prompted further revisions to the proposal. In the final rule GSA has endeavored to be attentive to the First Amendment rights of individuals who desire to use areas of public buildings as a forum for the expression of ideas, advocacy of causes, and solicitation of funds, as well as responsive to GSA's duties to safely and efficiently maintain and operate these public buildings.

(c) Specific Comments

The following is a categorized summary of the major issues which were commented on and the actions taken:

Permitted activities. Two commenters criticized the regulations because they did not describe all of the activities which will be allowed in the public areas of public buildings. The Public Buildings Cooperative Use Act of 1976 (Cooperative Use Act) specifically permits the use of public areas of public buildings for cultural, educational, and recreational activities. "Cultural," "educational," and "recreational" activities are defined in the Cooperative Use Act and those definitions have been incorporated into these regulations in § 101-20.701 (h), (i), and (j).

GSA recognizes that persons or organizations engaging in activities constitutionally protected by the First Amendment must be afforded access to public areas of public buildings. However, GSA does not believe that it is necessary, or possible, to list in these regulations all activities protected by

the First Amendment. Modifications have been made to the proposed regulations which should lend greater specificity to this area. For example, § 101-20.702 has been revised to require persons or organizations desiring to use a public area of a public building or its grounds for the purpose of soliciting funds to submit one of the three statements listed in § 101-20.702(c), (1), (2), or (3). Through this revision GSA intends to clarify that it will permit solicitation by all those persons and organizations to which the statements in § 101-20.702(c) would refer, if the proposed solicitation would otherwise be in accord with the provisions of Subpart 101-20.7. That is, with the exception of those types of solicitation proscribed by § 101-20.308, solicitation of funds is an activity permitted in accordance with the provisions of Subpart 101-20.7. Examples of permissible forms of solicitation would be the solicitation of funds for religious purposes and the solicitation of funds for tax-exempt organizations. Distribution of literature is another example of an activity clearly stated to be permissible in public areas of public buildings. § 101-20.309 provides for this activity. GSA does not intend the above-mentioned examples to be a limitation on the extent of activities permitted in public areas of public buildings.

Public areas. One commenter criticized the definition of the term "public area" as being overly vague. The commenter suggested that GSA specify in the regulations which areas were to be available for public use and how many permits would be allowed for each area. GSA is aware that other agencies have issued regulations which list the specific areas available and the maximum number of permits for those areas. However, there exists a practical difference between other agencies' regulations and GSA's. Other agencies' regulations usually apply to only a small number of facilities. For example, the Federal Aviation Administration has recently issued regulations (45 FR 35314, May 27, 1980) which apply to only two facilities, Washington National Airport and Dulles Airport. GSA's regulations, however, would apply to thousands of public buildings under the charge and control of GSA. Because of the lack of similarity of most of the buildings with regard to their construction, design, and physical layout, it would not be possible to issue regulations listing the specific areas of each public building available for use. Nor would it be possible to specify the maximum number of permits which could be issued for these areas. GSA believes that the definition of the

term "public area" set forth in these regulations specifies, to the extent practicable, those areas of public buildings available for use. It is not intended that the examples listed in §101-20.701(b) (that is, lobbies, courtyards, meeting rooms, and auditoriums) be a limitation on the areas in a specific building that are available for use under these regulations. The fact that the Cooperative Use Act lists lobbies, courtyards, meeting rooms, and auditoriums as available for use is evidence that these areas are appropriate places for the exercise of certain First Amendment expressions. Whether areas other than lobbies, courtyards, meeting rooms, and auditoriums are "public areas" depends upon the purpose or use of the area. An area that is open to members of the public to visit or transact Government business does not necessarily convert that area into a "public area" for purposes of this regulation. However, if such an area has been made available to members of the public for expression of their First Amendment rights, whatever form that may take, then the area would be a "public area."

Permit system. Several commenters criticized the provision which required that an application for a permit be submitted at least 30 days but no more than 90 days in advance of the proposed use as being too restrictive. GSA agrees. The final regulations will require that a decision on the issuance of a permit be made promptly and not later than 10 days of receipt of a completed application. Three commenters criticized the requirement in §101-20.702(a) that applicants for a permit provide information regarding their identity. The commenters asserted that applicants desiring to distribute literature have a right to anonymity that would be violated by §101-20.702(a). The commenters cite the case of *Talley vs. California*, 362 U.S. 60 (1960) in support of their argument. GSA respectfully disagrees. The regulations in the *Talley vs. California* case are distinguishable from the present regulations. In that legal case persons seeking to distribute literature (leafletors) were required to place their name, address, and the organization they represented on the literature itself. By complying with this requirement, the leafletor's identity was known to the person receiving the literature. It was feared that revealing the leafletor's identity to the person receiving the literature might deter peaceable discussion of public matters of importance and therefore have a chilling effect on the leafletor's First Amendment right to distribute this

literature. Under GSA's regulations, a leafletor is not required to place his or her name, address, and the organization represented on the literature. The identity of the leafletor would not be known to the person receiving this literature and there would be no deterrent to the peaceable discussion between the parties of public matters of importance.

Restrictions on behavior. Several commenters also criticized the requirement contained in §101-20.707(a)(5) that all permittees wear identification badges while conducting the activities. The commenters expressed the same above-mentioned concern; i.e., the leafletors' right to anonymity would be violated. GSA agrees in part. The regulations have been modified to require that only those permittees engaging in the solicitation of funds not prohibited by §101-20.308 would be required to wear an identification badge.

Several commenters also criticized the requirement contained in §101-20.707(a)(6) that donations be accepted only at solicitation booths. This requirement has been deleted from the final regulations. All comments have been considered. Modifications have been made to the proposed regulations as set forth below.

Accordingly GSA amends 41 CFR Part 101-20 as follows:

Subpart 101-20.3—Conduct on Federal Property

1. Section 101-20.302 is revised to read as follows:

§ 101-20.302 Admission to property.

Property shall be closed to the public during other than normal working hours. The closing of property will not apply to that space in those instances where the Government has approved the after-normal-working-hours use of buildings or portions thereof for activities authorized by Subpart 101-20.7. During normal working hours, property shall be closed to the public only when situations require this action to ensure the orderly conduct of Government business. The decision to close the property shall be made by the designated official under the Occupant Emergency Program after consultation with the buildings manager and the ranking representative of the Federal Protective Service Division responsible for protection of the facility or the area. This requirement does not preempt the authority of the Regional Director, Federal Protective Service Division, or any other authorized GSA official to effect a security alert of a facility in

accordance with GSA Order, Physical Security of Buildings Alert Guidelines (PBS 5930.16), dated February 20, 1976. This action shall be coordinated with the designated official. The designated official is defined in § 101-20.504-3(f) as the highest ranking official of the primary occupant agency, or the alternate highest ranking official or designee selected by mutual agreement by other occupant agency officials. When property, or a portion thereof, is closed to the public, admission to this property, or a portion, will be restricted to authorized persons who shall register upon entry to the property and shall, when requested display Government or other identifying credentials to the Federal Protective Officers or other authorized individuals when entering, leaving, or while on the property. Failure to comply with any of the above applicable provisions is a violation of these regulations.

2. Section 101-20.303 is revised to read as follows:

§ 101-20.303 Preservation of property.

The improper disposal of rubbish on property; the willful destruction of or damage to property; the theft of property; the creation of any hazard on property to persons or things; the throwing of articles of any kind from or at a building or the climbing upon statues, fountains, or any part of the building, is prohibited.

3. Section 101-20.307 is revised to read as follows:

§ 101-20.307 Alcoholic beverages and narcotics.

Operation of a motor vehicle while on the property by a person under the influence of alcoholic beverages, narcotic drugs, hallucinogens, marijuana, barbiturates, or amphetamines is prohibited. Entering upon the property, or while on the property, under the influence of or using or possessing any narcotic drug, hallucinogen, marijuana, barbiturate, or amphetamine is prohibited. This prohibition shall not apply in cases where the drug is being used as prescribed for a patient by a licensed physician. Entering upon the property, or being on the property, under the influence of alcoholic beverages is prohibited. The use of alcoholic beverages on property is prohibited except, upon occasions and on property upon which the head of the responsible agency or his or her designee has for appropriate official uses granted an exemption in writing. The head of the responsible agency or his or her designee shall provide a copy of all exemptions granted to the buildings